



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Service Contractors

File: B-243236

Date: July 12, 1991

John Hammer for the protester,
John P. Opitz, Esq., and Kenneth A. Markison, Esq., Department
of Housing and Urban Development, for the agency,
Paula A. Williams, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protest against award of 6-month contract for lawn main-
tenance services using limited competition is sustained where
record indicates that the "urgency" which was used to justify
limited competition was the result of the contracting agency's
lack of advance planning, in particular its failure to
commence the selection process until 6 months after the
incumbent's contract had expired.

DECISION

Service Contractors protests the award of a 6-month contract
to Harvey Reed's Lawn and Garden Care Services under request
for quotations (RFQ) No. 016-91-064, issued by the Department
of Housing and Urban Development (HUD), Property Disposition
Branch, for lawn mowing and maintenance services at all
vacant, foreclosed single family homes located in the New
Orleans Metropolitan area. The procurement was conducted
under the "unusual and compelling urgency" exception to the
requirement for full and open competition under the Competi-
tion in Contracting Act of 1984 (CICA). 41 U.S.C. § 253(c)(2)
(1988). Service Contractors contends that the agency's use
of noncompetitive procedures was not properly justified and
that it was improperly excluded from the competition even
though it had expressed an interest in competing and is able
to meet HUD's requirements.

We sustain the protest on the ground that the "urgent" need for lawn maintenance services resulted from the procuring agency's lack of advance planning.

The services in question are usually obtained by HUD Field Offices as small business set-asides or under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). These services were most recently performed by a section 8(a) subcontractor under a contract which expired on November 30, 1990. The agency did not have any replacement contractor when the 8(a) contract ended. As a result, the contracting officer issued additional purchase orders to the incumbent 8(a) subcontractor. HUD states that the contracting officer then decided to use small purchase procedures to obtain the services on an interim basis. The contracting officer also "took the additional step" of requesting approval to conduct a limited competition for the interim services based on urgency. A Justification and Approval (J&A) for using other than full and open competitive procedures due to urgency was approved by the head of the contracting activity on March 1, 1991.

In the J&A, the contracting officer certified that the services were urgently needed because there would be fewer sales of HUD-owned properties if the lots were uncleared and the lawns uncut. The J&A also provided that this was an interim procurement with an estimated value not to exceed \$100,000, and stated that the urgency was "caused by personnel turnover and inexperience of current staff, not by poor planning or lack of planning."

On February 15, 1991, HUD issued the RFQ as a small business-small purchase set-aside under Federal Acquisition Regulation (FAR) § 13.105, to three small businesses identified through a telephone market survey as interested in submitting quotes for the interim contract. Service Contractors states that the agency failed to provide it with a copy of the solicitation despite repeated requests to the agency. The protester has produced copies of itemized telephone bills with telephone calls to HUD's New Orleans Field Office, as well as copies of a mailgram addressed to the agency requesting a copy of the RFQ. In addition, the protester states that he personally went to the HUD office in New Orleans and was advised that he could not receive a copy of the solicitation because it was the day before "bid opening." While the contracting officer does not recall receiving any written requests from the protester regarding the RFQ and reports that the agency's telephone log apparently does not indicate that HUD received any calls from the protester, we are persuaded by the protester's documentary evidence, and it appears to us that the agency declined to furnish the protester with a copy of

the RFQ. This made it impossible for the protester to compete.^{1/}

Of the three firms solicited--Harvey Reed, Lloyd Bolds and Brad's Lawn Care--only two submitted quotes by the February 28 closing date. Harvey Reed submitted the low aggregate quote of \$11,291.50 per month and HUD awarded a contract to that firm on March 4, for a period not to exceed 6 months. Service Contractors subsequently protested alleging that HUD improperly invoked the claim of urgency to limit competition because the urgency was created by lack of advance planning on the part of the agency, and poor planning cannot be used to justify HUD's decision to limit the competition. We agree.

CICA explicitly provides that award of a contract using other than competitive procedures may not be made where the urgent need for the requirement has been brought about by a lack of advance planning by contracting officials. 41 U.S.C. § 253(f)(5)(A). While the J&A executed by the contracting officer states that the urgency was not created by lack of advance planning, the stated reasons, agency personnel turnover and inexperience, essentially recognize the lack of advance planning and merely provide an excuse based on the limitations of the agency procurement personnel.

Considering the on-going need for lawn maintenance services at HUD-owned properties, the agency failed to develop an adequate plan to compete the follow-on requirements to meet HUD's needs. Planning would have permitted HUD to begin the competitive selection process for a follow-on 8(a) subcontract in advance of November 30, 1990--the expiration date of the prior subcontract. Instead, the agency did not commence substantial action to select another 8(a) subcontractor until May 10, 1991, some 6 months after the most recent 8(a)

^{1/} As discussed, the agency treated this procurement under small purchase procedures, which CICA provides for purchases not exceeding \$25,000. 41 U.S.C. § 253(g). While it is clear that this procurement does not qualify for small purchase procedures since the agency anticipated an award in excess of \$50,000, even under these procedures, while agencies are exempt from the general CICA requirements for full and open competition, they are required to obtain competition to the maximum extent practicable. S.C. Servs., Inc., B-221012, Mar. 18, 1986, 86-1 CPD ¶ 266. In particular, the agency may not unreasonably exclude from competing any responsible source which requests the opportunity to compete. Gateway Cable Co., 65 Comp. Gen. 854 (1986), 86-2 CPD ¶ 333; J. Sledge Janitorial Serv., B-241843; B-241845, Feb. 27, 1991, 91-1 CPD ¶ 225. Under this standard, the agency's refusal to provide Service Contractors with a copy of the solicitation was improper.

subcontract had expired. Since the record does not support HUD's position that there was any urgency which justified its decision to limit competition, apart from that created by HUD's lack of advance planning, we sustain the protest. See TeQcom, Inc., B-224664, Dec. 22, 1986, 86-2 CPD ¶ 700.

Because the period of performance under this interim contract will expire no later than September 4, and the agency is in the process of competitively selecting a new 8(a) subcontractor, we are not recommending termination and resolicitation. However, Service Contractors is entitled to reimbursement of its protest costs. 4 C.F.R. § 21.6(d)(1) (1991). Service Contractors should submit its claim for costs directly to the agency.

The protest is sustained.

for Milton J. Hootan
Comptroller General
of the United States